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21 Attorneys for Defendant
22 PEGATRON USA, INC.

23 UNITED STATES DISTRICT COURT
24 NORTHERN DISTRICT OF CALIFORNIA
25 SAN FRANCISCO DIVISION

26 JOSHUA SMITH, individually and on
27 behalf of all others similarly situated,

28 Plaintiff,

v.

PEGATRON USA, INC., a California
corporation, ASROCK AMERICA, INC., a
California corporation, and FATALITY, INC.,
d/b/a Fatal1ty, Inc., a Missouri corporation,

Defendants.

Case No. 3:14-cv-01822-CRB

ANSWER OF DEFENDANT
PEGATRON USA, INC. TO FIRST
AMENDED CLASS ACTION
COMPLAINT

1 Defendant Pegatron USA, Inc. (“Pegatron USA”), by and through its attorneys, hereby
2 answers the First Amended Class Action Complaint of Plaintiff Joshua Smith (“Plaintiff” or
3 “Smith”) filed on July 3, 2014.

4 **NATURE OF THE ACTION**

5 1. According to the FAC, the term “ASRock” refers to Defendant ASRock America,
6 Inc., which, for purposes of this Answer, will be referred to as “ASRock America.” Defendant
7 Pegatron USA denies that Pegatron Corporation acquired defendant ASRock America, in 2010 or
8 ever. As to the remaining allegations of this paragraph, Defendant Pegatron USA lacks knowledge
9 or information sufficient to form a belief about the truth of these allegations and on such basis denies
10 them.

11 2. Defendant Pegatron USA denies that it had any involvement in any aspect of the
12 ASRock Fatal1ty motherboards at issue in this action, including the design, development,
13 production, marketing, advertising or selling of them. Said defendant further denies that it
14 developed any marketing materials for the ASRock Fatal1ty motherboards. Defendant Pegatron
15 USA denies the allegations of this paragraph.

16 3. Denied.

17 4. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief
18 about the truth of these allegations and on such basis denies them. Said Defendant further denies
19 that plaintiff and/or the class he seeks to represent are entitled to any relief from this answering
20 defendant.

21 **PARTIES**

22 5. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief
23 about the truth of these allegations and on such basis denies them.

24 6. Defendant Pegatron USA admits the first sentence of this paragraph; and, further
25 admits that Pegatron USA is a subsidiary of non-party Pegatron Corporation. Except as so expressly
26 admitted Defendant Pegatron USA denies the allegations of this paragraph.

27 7. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief
28 about the truth of these allegations and on such basis denies them.

8. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

JURISDICTION AND VENUE

9. Defendant Pegatron USA admits that Plaintiff is a citizen of a different state than the Defendants. Defendant Pegatron USA denies the remaining allegations of this paragraph.

10. Defendant Pegatron USA admits that it conducts business in California. Defendant Pegatron USA denies that "...the events giving rise to this lawsuit occurred, in substantial part, in California. As to the remaining allegations of this paragraph, Defendant Pegatron USA lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

11. Defendant Pegatron USA admits that it maintains its headquarters and principal place of business in this District. Except as so expressly admitted Defendant Pegatron USA denies the allegations of this paragraph.

FACTUAL BACKGROUND

12. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

13. Denied.

14. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

15. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

16. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

17. Denied.

18. Denied.

19. Defendant Pegatron USA denies that it is engaged any motherboard line of business and denies it had any involvement in any aspect of the ASRock Fatal1ty motherboards, including the design, development, production, marketing, advertising or selling of them. Said defendant further

1 denies that it was involved in developing or producing any presentations or advertising statements
2 relating to the ASRock Fatal1ty motherboards. Said Defendant further denies the allegations of this
3 paragraph.

4 20. Defendant Pegatron USA admits that the physical packaging of certain models of the
5 ASRock Fatal1ty motherboards contained, at one time, the following statement, among others:

6 "Boosts Networking Performance 5X."

7 "5X Networking Performance...feature Killer E2200 Intelligent
8 Networking Platform, which boosts networking performance up to 5X
9 for time-sensitive UDP (User Datagram Protocol) based applications,
such as online games and high quality media streaming."

10 Except as so expressly admitted Defendant Pegatron USA denies the allegations of this
11 paragraph.

12 21. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief
13 about the truth of these allegations and on such basis denies them.

14 22. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief
15 about the truth of these allegations and on such basis denies them.

16 23. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief
17 about the truth of these allegations and on such basis denies them.

18 24. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief
19 about the truth of the allegations of the first sentence of this paragraph and on such basis denies
20 them. This answering Defendant admits the allegations of the second sentence of this paragraph.
21 This answering Defendant denies the allegations of the third sentence of this paragraph.

22 25. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief
23 about the truth of these allegations and on such basis denies them.

24 26. Defendant Pegatron USA denies that it is engaged any motherboard line of business
25 and denies it had any involvement in any aspect of the ASRock Fatal1ty motherboards, including the
26 design, development, production, marketing, advertising or selling of them. Said defendant does not
27 maintain a website and denies that it made any of the statements alleged on any website, and denies
28 the allegations of this paragraph.

1 27. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief
2 about the truth of these allegations and on such basis denies them.

3 28. Defendant Pegatron USA denies that it is engaged any motherboard line of business
4 and denies it had any involvement in any aspect of the ASRock Fatal1ty motherboards, including the
5 design, development, production, marketing, advertising or selling of them. Defendant Pegatron
6 USA lacks knowledge or information sufficient to form a belief about the truth of these allegations
7 and on such basis denies them.

8 29. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief
9 about the truth of these allegations and on such basis denies them.

10 30. Defendant Pegatron USA denies that it is engaged any motherboard line of business
11 and denies it had any involvement in any aspect of the ASRock Fatal1ty motherboards, including the
12 design, development, production, marketing, advertising or selling of them. Said defendant does not
13 maintain a website and denies that it made any of the statements alleged on any website, and denies
14 the allegations of this paragraph.

15 31. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief
16 about the truth of these allegations and on such basis denies them.

17 32. Defendant Pegatron USA denies that it is engaged any motherboard line of business
18 and denies it had any involvement in any aspect of the ASRock Fatal1ty motherboards, including the
19 design, development, production, marketing, advertising or selling of them. Said defendant further
20 denies that it made any of the advertising statements which are the subject of the FAC and denies the
21 allegations of this paragraph.

22 33. Defendant Pegatron USA denies that it is engaged any motherboard line of business
23 and denies it had any involvement in any aspect of the ASRock Fatal1ty motherboards, including the
24 design, development, production, marketing, advertising or selling of them. Said defendant does not
25 maintain a website and denies that it made any of the statements alleged on any website, and denies
26 the allegations of this paragraph.

27 34. Defendant Pegatron USA denies that it is engaged any motherboard line of business
28 and denies it had any involvement in any aspect of the ASRock Fatal1ty motherboards, including the

1 design, development, production, marketing, advertising or selling of them. Defendant Pegatron
2 USA lacks knowledge or information sufficient to form a belief about the truth of these allegations
3 and on such basis denies them.

4 35. Defendant Pegatron USA denies that it is engaged any motherboard line of business
5 and denies it had any involvement in any aspect of the ASRock Fatal1ty motherboards, including the
6 design, development, production, marketing, advertising or selling of them. Defendant Pegatron
7 USA lacks knowledge or information sufficient to form a belief about the truth of these allegations
8 and on such basis denies them.

9 36. Denied.

10 37. Defendant Pegatron USA denies that it is engaged any motherboard line of business
11 and denies it had any involvement in any aspect of the ASRock Fatal1ty motherboards, including the
12 design, development, production, marketing, advertising or selling of them. Defendant Pegatron
13 USA lacks knowledge or information sufficient to form a belief about the truth of these allegations
14 and on such basis denies them.

15 38. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief
16 about the truth of these allegations and on such basis denies them.

17 39. Denied.

18 40. Defendant Pegatron USA denies that it was involved in the creation of any user
19 manual for any of the products at issue in the FAC and denies the allegations of this paragraph.

20 41. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief
21 about the truth of these allegations and on such basis denies them.

22 42. Denied.

23 43. Defendant Pegatron USA denies that it is engaged any motherboard line of business
24 and denies it had any involvement in any aspect of the ASRock Fatal1ty motherboards, including the
25 design, development, production, marketing, advertising or selling of them. Defendant Pegatron
26 USA lacks knowledge or information sufficient to form a belief about the truth of these allegations
27 and on such basis denies them.

28 44. Denied.

1 45. Denied.

2 46. Denied.

3 47. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief
4 about the truth of these allegations and on such basis denies them.

5 48. Denied.

6 49. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief
7 about the truth of these allegations and on such basis denies them.

8 50. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief
9 about the truth of these allegations and on such basis denies them.

10 51. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief
11 about the truth of these allegations and on such basis denies them.

12 52. Denied.

13 53. Denied.

14 54. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief
15 about the truth of these allegations and on such basis denies them.

16 55. Denied.

17 **CLASS ALLEGATIONS**

18 56. Defendant Pegatron USA denies that this action may properly proceed as a class
19 action under the provisions of any applicable law. Responding further, Defendant Pegatron USA
20 lacks knowledge or information sufficient to form a belief about the truth of these allegations and on
21 such basis denies them.

22 57. Denied.

23 58. Denied.

24 59. Denied.

25 60. Denied.

26 61. Denied.

27 62. Denied.

28 63. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief

about the truth of these allegations and on such basis denies them.

FIRST CAUSE OF ACTION
Violation of Consumers Legal Remedies Act
Cal. Civ. Code §§ 1750, *et seq.*
(On Behalf of Plaintiff and the Class)

64. Defendant Pegatron USA hereby incorporates by reference its responses to the allegations in each of the preceding paragraphs as if set out in full herein.

65. Defendant Pegatron USA denies that it engaged in the actions and/or conduct alleged in the FAC and denies the allegations of this paragraph.

66. Admitted.

67. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

68. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

78. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

79. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

80. Denied.

81. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

82. Denied.

83. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief about the truth of the allegations in the first sentence of this paragraph and on such basis denies them. Said answering defendant admits the allegations in the second sentence of this paragraph. Said answering defendant further alleges that neither plaintiff nor the members of the class he seeks to represent are entitled to any remedy against this answering defendant.

SECOND CAUSE OF ACTION
Violations of California's Unfair Competition Law
Cal. Bus. & Prof. Code §§ 17200, *et seq.*
(On Behalf of Plaintiff and the Class)

84. Defendant Pegatron USA hereby incorporates by reference its responses to the allegations in each of the preceding paragraphs as if set out in full herein.

85. The allegations in this paragraph are conclusions of law and not allegations of fact. Defendant Pegatron USA admits that the courts and the California legislature have stated the purpose of the UCL and that all parties are bound by such expressions to the extent that the law so provides. Except as so expressly admitted, Defendant Pegatron USA lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

86. The allegations in this paragraph are conclusions of law and not allegations of fact. Defendant Pegatron USA admits that the express language of the UCL speaks for itself. Except as so expressly admitted, Pegatron USA lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

87. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

88. Denied.

89. Denied.

90. Denied.

91. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

92. Defendant Pegatron USA denies that it engaged in the acts alleged in the FAC, denies any conduct of these defendants was fraudulent or in any way improper and denies the allegations of this paragraph.

93. Denied.

94. Denied.

95. Defendant Pegatron USA denies that it engaged in the acts alleged in the FAC, denies any conduct of it was fraudulent or in any way improper and denies the allegations of this paragraph. As to the remaining allegations in this paragraph, Defendant Pegatron USA lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

96. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on such basis denies them. Said answering defendant further alleges that neither plaintiff nor the members of the class he seeks to represent are entitled to any remedy against this answering defendant.

THIRD CAUSE OF ACTION
Violation of False Advertising Law
Cal. Bus. & Prof. Code §§ 17500, *et seq.*
(On Behalf of Plaintiff and the Class)

97. Defendant Pegatron USA hereby incorporates by reference its responses to the allegations in each of the preceding paragraphs as if set out in full herein.

98. The allegations in this paragraph are conclusions of law and not allegations of fact. Defendant Pegatron USA admits that the express language of the FAC speaks for itself. Except as so expressly admitted, Pegatron USA lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

99. Denied.

100. Denied.

101. Denied.

102. Denied.

103. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on such basis denies them. Said answering defendant further alleges that neither plaintiff nor the members of the class he seeks to represent are entitled to any remedy against this answering defendant.

FOURTH CAUSE OF ACTION
Fraud in the Inducement
(On Behalf of Plaintiff and the Class)

104. Defendant Pegatron USA hereby incorporates by reference its responses to the allegations in each of the preceding paragraphs as if set out in full herein.

105. Denied.

106. Denied.

107. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief about the truth of these allegations and on such basis denies them.

108. Denied.

109. Denied.

110. Denied.

111. Denied.

112. Denied.

113 Denied

114. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and on such basis denies them. Said answering defendant further alleges that neither plaintiff nor the members of the class he seeks to represent are entitled to any remedy against this answering defendant.

FIFTH CAUSE OF ACTION
Breach of Express Warranties
(On Behalf of Plaintiff and the Class)

115. Defendant Pegatron USA hereby incorporates by reference its responses to the allegations in each of the preceding paragraphs as if set out in full herein.

116. Defendant Pegatron USA denies that it made any of the advertising statements at

1 issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or
2 owned any website referred to in the FAC, and further denies it made any statement referred to in the
3 FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations
4 of this paragraph.

5 117. Defendant Pegatron USA denies that it made any of the advertising statements at
6 issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or
7 owned any website referred to in the FAC, and further denies it made any statement referred to in the
8 FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations
9 of this paragraph.

10 118. Defendant Pegatron USA denies that it made any of the advertising statements at
11 issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or
12 owned any website referred to in the FAC, and further denies it made any statement referred to in the
13 FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations
14 of this paragraph.

15 119. Defendant Pegatron USA denies that it made any of the advertising statements at
16 issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or
17 owned any website referred to in the FAC, and further denies it made any statement referred to in the
18 FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations
19 of this paragraph.

20 120. Denied.

21 121. Defendant Pegatron USA denies that it made any of the advertising statements at
22 issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or
23 owned any website referred to in the FAC, and further denies it made any statement referred to in the
24 FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations
25 of this paragraph.

26 122. Defendant Pegatron USA denies that it made any of the advertising statements at
27 issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or
28 owned any website referred to in the FAC, and further denies it made any statement referred to in the

1 FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations
2 of this paragraph.

3 123. Defendant Pegatron USA denies that it made any of the advertising statements at
4 issue in the FAC, was involved in creating product packaging, or created, maintained, hosted, or
5 owned any website referred to in the FAC, and further denies it made any statement referred to in the
6 FAC that plaintiff contends constitutes a warranty. Said answering defendant denies the allegations
7 of this paragraph.

8 124. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief
9 about the truth of the allegations in this paragraph and on such basis denies them. Said answering
10 defendant further alleges that neither plaintiff nor the members of the class he seeks to represent are
11 entitled to any remedy against this answering defendant.

12 **SIXTH CAUSE OF ACTION**
13 **Unjust Enrichment**
14 **(On Behalf of Plaintiff and the Class)**

15 125. Defendant Pegatron USA hereby incorporates by reference its responses to the
16 allegations in each of the preceding paragraphs as if set out in full herein.

17 126. Denied.

18 127. Denied.

19 128. Denied.

20 129. Defendant Pegatron USA lacks knowledge or information sufficient to form a belief
21 about the truth of the allegations in this paragraph and on such basis denies them. Said answering
22 defendant further alleges that neither plaintiff nor the members of the class he seeks to represent are
23 entitled to any remedy against this answering defendant.

24 **AFFIRMATIVE DEFENSES**

25 Pegatron USA hereby asserts the following affirmative defenses to Plaintiff's claims.
26 Pegatron USA reserves the right to raise other defenses, affirmative or otherwise, that may become
27 evident during discovery and during any other proceeding in this action. Pegatron USA also
28 reserves the right to amend and/or delete any affirmative defenses in the event that discovery
indicates it may be appropriate to do so.

FIRST AFFIRMATIVE DEFENSE (Failure to State a Claim)

130. As a first affirmative defense, Defendant Pegatron USA alleges that Plaintiff has failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE
(Immunity under Communications Decency Act, 47 U.S. C. § 230)

131. As a second affirmative defense, Defendant Pegatron USA alleges that it did not create or develop any of the advertising statements on which the claims in this action are based, and to the extent that any such statement is linked to or otherwise accessed by or through any website of Pegatron USA, assuming there is any such website, Pegatron USA is immune from liability and/or no claim can be brought against Pegatron USA based on such statement under the Communications Decency Act, 47 U.S.C. § 230.

THIRD AFFIRMATIVE DEFENSE (Failure to Mitigate Alleged Damages)

132. As a third affirmative defense, Defendant Pegatron USA alleges that Plaintiff has not mitigated its damages, if any.

FOURTH AFFIRMATIVE DEFENSE **(Unconstitutionality)**

133. As a fourth affirmative defense, Defendant Pegatron USA alleges that the claims, to the extent that they seek exemplary or punitive damages, violate Defendant's rights to procedural due process under the Fourteenth Amendment of the United States Constitution and, therefore, fail to state a cause of action upon which punitive or exemplary damages can be awarded.

FIFTH AFFIRMATIVE DEFENSE (Reservation of Rights)

134. As a fifth affirmative defense, Defendant Pegatron USA alleges that discovery has not yet begun, and on the basis of such discovery, other affirmative defenses may become known or substantiated. Defendant reserves the right to add affirmative defenses within a reasonable time after the facts of said affirmative defenses may become known to Defendant.

SIXTH AFFIRMATIVE DEFENSE **(Lack of Adequate Representation)**

135. As a sixth affirmative defense, Defendant Pegatron USA alleges the named Plaintiffs lack standing as representatives of the proposed class and do not adequately represent the putative class members.

SEVENTH AFFIRMATIVE DEFENSE (Fails to Meet Rule 23)

136. As a seventh affirmative defense, Defendant Pegatron USA alleges that this action does not meet the requirements for class action treatment under Rule 23 of the Federal Rules of Civil Procedure, or any other applicable law, including, but not limited to, failing to satisfy the requirements of numerosity, commonality and predominance, typicality, and superiority. Plaintiffs cannot prosecute this action on behalf of the putative class they purport to represent.

EIGHTH AFFIRMATIVE DEFENSE (Defense of Other Defendants)

137. As an eighth affirmative defense, Defendant Pegatron USA incorporates and adopts each and every applicable defense asserted by any other defendant in this action.

WHEREFORE, Defendant Pegatron USA, Inc. prays as follows:

1. The Plaintiff take nothing by reason of its complaint and that judgment be entered in favor of Defendants.

2. That Defendant Pegatron USA, Inc. be awarded its costs of suit incurred in defense of this action; and,

3. For such other and further relief as the Court deems proper.

Dated: September 22, 2014

Respectfully submitted,

BAKER & MCKENZIE LLP

By: /s/ Tod L. Gamlen
Tod L. Gamlen
Attorneys for Defendant
PEGATRON USA, INC.